

PAN (Migration) [2017] AATA 1307 (4 July 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr GUOQIANG PAN
VISA APPLICANTS:	Ms YUANSHUANG CHEN Master WEICHENG CHEN
CASE NUMBER:	1606841
DIBP REFERENCE:	BCC2015/1533131
MEMBER:	Rosa Gagliardi
DATE:	4 July 2017
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 04 July 2017 at 4:05pm

CATCHWORDS

Migration – Partner (Provisional) (Class UF) visa – Subclass 309 – Contrived relationship – Insufficient evidence of relationship – Limited evidence of cohabitation in China – Sponsor’s residence with former partner – No evidence of custody arrangement and child support payments – Not a genuine and continuing spousal relationship

LEGISLATION

Migration Act 1958, ss 5F, 65

Migration Regulations 1994, Schedule 2, cl.309.211(2), cl 309.221, r 1.15A(3)

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 27 April 2016 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named visa applicant (the visa applicant) applied for the visa on 28 May 2015 on the basis of their relationship with their sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.309.211(2).
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 because it was considered that the applicant and the sponsor were not in a genuine and continuing spousal relationship as set out in the Regulations.
4. The review applicant/sponsor appeared before the Tribunal on 27 March 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant overseas. A friend, Huanzhuang also gave evidence at the hearing.
5. The review applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

SPOUSE/DE FACTO (cl.309.211(2), cl.309.221)

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

7. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian Permanent Resident. He appears to be on a subclass 155 visa.
8. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

9. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

10. Background

11. The applicant is 28 years of age and was born in Guangxi, China. She now resides in Taishan City. She has a young child, who it is claimed, is the result of an encounter that did not lead to a relationship. The sponsor is 46 years of age and was born in Guangdong Province in China and is now an Australian Permanent resident. He migrated to Australia on a Skilled Australian Linked visa (subclass 105) in 2003. He has a nine year old son from a previous relationship. The parties, it is claimed in their relationship statement, were introduced to each other by a friend in December 2013. From then on they began to chat by phone and by video calls online. In May 2014, the sponsor went back to China and the parties met for the first time in person. It is claimed that the applicant's son and the sponsor also bonded.
12. On 22 May 2014 it is claimed that the sponsor took the applicant to visit his sister in Guangzhou and she became acquainted with his home town.
13. When the sponsor returned to Australia, they continued to contact each as they had done previously. The sponsor then flew back to China in November 2014 and on 6 November 2014, he gave her a diamond ring and a gold bracelet and proposed. The applicant shared her news with her family and friends but by then the sponsor had returned to Melbourne on 15 November 2014.
14. The sponsor then returned to China and the marriage was registered on 5 March 2015. Thirty to forty people attended the wedding. They did not hold a big wedding celebration because the sponsor's family members are in Australia. They intend to hold a large one when their families can get together.

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

15. The financial aspects of the relationship

16. At the time of application, several receipts had been provided demonstrating that the sponsor had transferred money to the applicant. Evidence had also been submitted that demonstrated the sponsor had sent items to the applicant from Australia. At the time of decision the parties have now submitted:
- Several courier consignment notices of goods sent by the sponsor to the applicant overseas; and
 - Several overseas funds remittance notices for up to AUD1000.00 each, totalling AUD3,500.
17. At hearing the sponsor stated that he did not often send funds to the applicant because she had told him there was no need. The applicant works and according to the sponsor she earns 3,800 RMB a month which is enough for her and her child to live on. Her child is looked after by her parents when she is at work. The applicant works for a factory that makes chop sticks and when she is not working she resides in her home area, but during the week she actually lives at the factory where she works.

18. The Tribunal places weight on the funds and gifts the sponsor has sent to the applicant.
19. The sponsor works at a restaurant. He used to own a property but he sold it. After paying the mortgage he did not have much money left from the proceeds, particularly as he had also borrowed \$60,000 from a relative and had had to pay that back. He has experienced some financial pressure.
20. Overall the evidence of the parties' pooling of their financial arrangements or of joint ownership of assets is not extensive, and nor would it be reasonable for the Tribunal to expect it to be so. The parties are geographically separated and the sponsor is in the process of attempting to re-establish himself financially. In the circumstances, the Tribunal considers that the evidence is consistent with the parties' situation and the Tribunal makes no adverse inference in terms of the parties' financial arrangements.

21. *The nature of the household*

22. The sponsor after meeting the applicant has travelled to China; on several occasions in 2015 to attend his wedding and on another from late September to early October 2015. The Tribunal accepts that the sponsor then travelled to China in April 2017 again. In the submission to the Tribunal dated 22 March 2017, the migration agent argues that the delegate should have had more regard to the fact that the sponsor could not stay overseas for a lengthy period on his trips because of his employment and financial situation. The Tribunal agrees that it would be unreasonable to expect the applicant to have made lengthy and frequent trips to China although the brevity of the visits may, in light of other concerns, be a reflection of the sponsor travelling to China to produce evidence for the purposes of the application and this review.
23. At hearing the Tribunal asked the sponsor whether he had evidence that he lived with the applicant and her child in Taishan when he went to visit her there. The Tribunal mentioned for example, that he might be able to provide a Temporary Household Registration for the periods he visited the applicant. At hearing the migration agent claimed that a lot of people do not bother with the Temporary Household Registration any longer.
24. After the hearing the sponsor has submitted a copy of a Temporary Household Registration dated 8 May 2014. While the document has not been fully translated for the Tribunal, the document states that the sponsor declared that the purpose of the sponsor's visit was to visit "relatives and friends" when in any event the sponsor was not yet married to the applicant. This was the first time he was meeting the applicant in person, therefore, it would not be expected that he would have resided with the applicant on that occasion in 2014. Hence, the Tribunal can attribute little weight to the document as evidence that the parties have resided together in China, even after marriage.
25. However, the Tribunal considers that it is significant that the sponsor did not bother to register his stay in China after that occasion and has questions that indeed he may have registered with the authorities but that any such Registration documentation might not be favourable to him, and he is not providing it to the Tribunal for that reason.
26. At hearing the Tribunal asked the sponsor to submit any further household registrations that would demonstrate that the parties had cohabitated and had a temporary household together in China when the sponsor visited. The sponsor has now submitted a statement, dated 31 March 2017, from a neighbour of the applicant in Taishan City. The writer, Weiqui Liao states that before the applicant was married she was looking after her son and sick parents on her own and she had a difficult life. The writer states that he/she attended the parties' wedding and "*on many occasions before and after their wedding, Mr Guoqiang PAN*

(an Australian citizen), came to visit and stayed at Ms Yuanshuang CHEN's place at No.28 of Hengtang Hamlet of Chongjin Village...".

27. In addition, the Villagers Committee of Chongjin, Chixi Town, Taishan City, provided a certificate stating that the parties registered their marriage with the Civil authorities and that after marriage the sponsor has stayed at the home of the applicant. A further certificate has been provided by the Villagers Committee to state that on the same day that the parties were married, the applicant changed her marital status on the household register from Unmarried to Married at the local police station. The applicant has submitted evidence of her household register demonstrating she presents as "married".
28. The Tribunal has had regard to the information above and places some weight on the evidence. The Tribunal accepts that the sponsor may have stayed at the home of the applicant but of itself, this does not persuade the Tribunal that such stays may not have been orchestrated for the purposes of the application only. This is particularly in light of the fact that both the applicant and the sponsor stated that the applicant lived at the factory while she was working, leading the Tribunal to query where exactly they might have shared a temporary household if the sponsor was staying at the residential place of the applicant when the applicant was not there during her work time.
29. The Tribunal also finds the evidence submitted somewhat weak because it confirms a marriage took place and that the parties are aware of the marriage, but provides little insight into realistic details about how the sponsor and the applicant live as a family unit in China with the applicant's child. The Tribunal considers that the evidence submitted is somewhat diminished in this regard.
30. The Tribunal is also troubled that as highlighted by the department in the decision which was submitted to the Tribunal for the purposes of the review, the sponsor had appeared to be living with his former partner and mother of his child, 6 months prior to being interviewed by the department. In his submission dated 22 March 2017 to the Tribunal, the migration agent wrote *"The delegate then went on to assert that Mr Pan "was unable to provide reason as to why he still lived in CHEN Wanjing's [his ex-girlfriend and mother of his] until only 6 months prior to the interview date". Mr Pan have instructed us that he does not recall of being queried during the telephone interview as to why he remained living with Ms Wanjing Chen until he moved to Narre Warren about half year prior to the interview date. An examination of the interview notes on the Department's file equally do not reflect such question being asked. An examination of the interview notes on the Department's file equally do not reflect such question being asked. Accordingly, we ask the Tribunal to exercise caution in accepting the assertion being accurate"*.
31. The Tribunal raised this matter at hearing, although the Tribunal erroneously stated that it appeared that the sponsor had been living with his former partner 6 months prior to filing his application, which the migration agent corrected to say that the department was concerned that he had been living with his former partner 6 months *prior to interview* with the department. Regardless, the point the Tribunal was making was that it was odd that he should still be living with his former partner even though he had married the applicant. The sponsor did not deny the allegation by the department but instead stated that at the time he had his own house but was undergoing financial problems so he rented that property out. He needed somewhere to stay and his former partner, who also happens to be his cousin, had a vacant room so he stayed there so he could see his son more often.
32. When the Tribunal asked how the applicant felt about him residing with his former partner, the sponsor stated that she did not have a problem with it because everyone has a past. The interview by the migration agent's reckoning was held in October 2015 and the applicant had married in March 2015. Even if there had been no overlap in terms of living with his

former partner and his marriage to the applicant, it is accurate to say that during a key point of the development of the relationship the sponsor, by his own admission, was residing with his former partner.

33. The Tribunal does not place significant adverse weight on the sponsor spending a brief period (if indeed the period was brief with his former partner) as it is entirely plausible that the mother of a child might give her former partner and father of their common child shelter for a period in times of difficulty. However, when coupled together with limited persuasive evidence about the parties being in a genuine and continuing spousal relationship, this period of the sponsor living with his former partner raises questions in the mind of the Tribunal as to whether there may not be some continuing involvement with his former partner because the marriage with the applicant had been entered into for the sole purpose of achieving a migration outcome. This is particularly so as there does not appear to be a Court Order regulating how often the sponsor is able to see his son or an arrangement for the sponsor to pay child support through Centrelink. When asked about these matters, the sponsor stated that he was not sure if he had received a letter from Centrelink to state that he should pay \$200 per month in child support. He stated that there were no fixed times to visit his child and that he got to see his son more now that he was in primary school.
34. Separating parties may wish to keep things amicable and have loose or vague arrangements for time spent with children. Nonetheless, if the sponsor were paying his claimed former partner \$200 per month in child support, the Tribunal would have expected that there would be evidence of this which would assist dispel any concerns the Tribunal has about the true nature of the sponsor's relationship to his former partner. The Tribunal places only limited weight on the sponsor's statements about his arrangements for care of his son with his former partner.

35. *Social aspects of the relationship*

36. When the Tribunal asked the sponsor whether he had told his son about his marriage he stated that he had not and that he planned to tell him when the applicant arrived in Australia. The sponsor's son is only 9 years of age so it might not be expected that the sponsor would go into detail about his relationship with the applicant. Nonetheless, the sponsor's future household would involve not just a step-mother for his son but also a step-brother for the sponsor's son. The Tribunal would have expected that the sponsor in making arrangements in his household to accommodate another child would have had reason to explain to his son that he had married and that, given his son is an only child, he should expect that he would have a step sibling to share the household with, at least on occasions.
37. The Tribunal finds it concerning that the sponsor has not taken the fundamental step of allowing his son to recognise his relationship, if only because of the adjustments the sponsor's son would have to make to having a sibling as part of his father's household. It does not seem realistic that the sponsor, if he were in a genuine and continuing spousal relationship with the applicant, would leave it for the future for his son to be overwhelmed with his father's new circumstances after the applicant's arrival in Australia.
38. At the time of application, and as set out in the decision which was submitted to the Tribunal for the purposes of the review, there were several anomalies that arose in respect of statutory declarations that were submitted at the time of application appearing to support the parties' claims to be in a genuine and continuing spousal relationship.
39. The departmental decision states:
40. Departmental staff phoned the sponsor and seven third parties to verify the relationship claims made in the application. It is noted that third parties frequently hesitated

when answering questions, raising concerns as to the genuineness of the claims made. When LI Caibing was first called, she quickly stated that she could not hear the officer, and abruptly hung up the phone. When she was phoned again, LI Caibing claimed to be the applicant's good friend; however she did not know basic information about the applicant such as what her job is. None of the third parties contacted knew the full name of the sponsor except LI Caibing who I noted had helped to arrange the application. The limited knowledge demonstrated by third parties, as well as the frequent hesitations when answering questions in relation to this relationship, raises concerns as to its genuineness.

41. A Statutory Declaration (Form 888) written by YU Yuanzhuang was provided as evidence of the relationship. When contacted, YU stated clearly that he had never signed any documents or provide(d) any statements or statutory declarations in relations (sic) to this application. This was clarified three times with YU, and he confirmed that he had not contributed to this application in any way. Due to YU's lack of knowledge of the Statutory Declaration provided in his name, I am unable to be satisfied that this document and the claims made within it are genuine. YU stated that he had known each of the parties for over 10 years, however I am unable to be satisfied of the veracity of this claim. YU did not know if the applicant had any siblings, nor did he know the sponsor's full name. YU then changed his claims to say that he had never contacted the applicant directly and that the applicant was friends with his wife. He could not explain why his wife helped the applicant to organise her visa application. YU's lack of knowledge about the documents submitted in his name, his general lack of knowledge and shifting claims regarding the relationship raises serious concerns as to the genuineness of further elements of this application, and ultimately brings into question the genuineness of the relationship between the parties.

42. The other Statutory Declaration (Form 888) was provided by WU Guozhu. On this form, WU did not claim to have met the applicant nor has she ever seen the applicant and the sponsor together...

43. In his submission of 22 March 2017 the migration agent stated that some of the comments by the delegate were mere assertions and could not be relied upon, that is, that Ms Caibing Li hung up abruptly and that she could not hear the officer. The migration agent rightly states that these are not matters that the department could rely on because they were subjective interpretations of what had occurred – as indeed were the “hesitations”.
44. The migration agent also states that Ms Caibing Li from the departmental interview notes, appears to have known that the applicant was aware that she worked at a chop stick factory and therefore it was wrong to say that Ms Li did not know about basic information regarding the work of the applicant. Furthermore, Ms Li was contacted by the department and did not provide a statement in support of the application and therefore any contact to her was made without warning.
45. Also the migration agent rightly points out that just because a witness did not know various iterations of the sponsor's name should not lead to a conclusion that the witness did not know the sponsor's name as he was also referred to by an abbreviated name. The agent also emphasises that some of the witnesses were caught off guard as they had never provided statements and that weight should be placed on the fact that the department contacted the mother of the applicant who gave consistent evidence.
46. The migration agent in his submission also goes on to refer to the evidence by Mr Huanzhuang Yu (whom he mentions the department incorrectly referred to as YU Yuanzhuang). The migration agent stated that he took evidence from Mr Yu (after the department's decision) who indicated to him that he was driving at the time of the departmental telephone call and could not recall the exact conversation. The migration agent also states that it's a possibility that a police officer witnessed the declaration and did not verify the identity of the declarant. It is the view of the migration agent that this is highly

unlikely and that the likely scenario is that there may have been some misunderstanding of the question asked at the time or some miscommunication occurred.

47. Comments are also made about the departmental observations in the decision not matching the notes taken by the department, although the Tribunal is not aware that the department writes interview notes verbatim. The fact that Ms Guozhu Wu, it is argued, might not have met the applicant is not of moment given that the applicant lives overseas; a matter the Tribunal concedes is plausible.
48. The exact nature of the conversations that occurred with witness several years ago now is impossible to determine by the Tribunal. Confronted with the information submitted by the department, the Tribunal might find, leaving aside the comments about the witnesses' "hesitation" to which the Tribunal ascribes no adverse weight, the circumstances described are concerning due to: (i) the possibility of fraudulent documents having been provided by the sponsor and the applicant, in which case the Tribunal queries whether any of the other documentation submitted to the Tribunal is similarly questionable; and (ii) the extent to which the parties' relationship is recognised as being genuine and continuing by their respective social circles.
49. However, the Tribunal is cautious in ascribing significant weight to conversations held some years ago. Having regard to the departmental interaction with the witnesses called, even if the Tribunal were to accept the migration agent's explanations wholesale (and it has reservations), what is notable about the interactions is that the witnesses did not appear to provide spontaneous and realistic evidence about the parties' relationship and why they considered the relationship was genuine and continuing. It could be argued that the department may not have asked the witnesses such questions, but clearly if the witnesses were well known to the applicant and the sponsor, they would have been able to provide unambiguous information about the relationship, for example, and how they viewed the family unit would operate in Australia; as well as give reasons why they were convinced as to the genuine nature of the relationship, whether the department had called them in an impromptu fashion or not.
50. The Tribunal has had regard to the documentation submitted at the time of application by third parties. Mr Huangzhuang Yu provided a Statutory Declaration Form 888 dated 24 May 2015, (the one subject of the department's concerns above) stating that he was now sharing a residence with the sponsor and knew him well and communicated almost every day. Mr Yu declared that he saw the sponsor talking to the applicant on the phone all the time and that the applicant asked that he and his wife look after the sponsor.
51. Mr Huangzheng Yu is a key protagonist in the claims made by the parties because Ms Li is also the sister of the applicant's boss. The Tribunal has concerns, therefore, that given Ms Li's involvement and interest in the case that she may have been attempting to facilitate a migration outcome for the visa applicant and this casts doubt over her statements of support and her motivation for providing them. This is particularly so in light of other concerns raised during the course of the review.
52. At hearing Mr Yu also gave evidence. The Tribunal put to Mr Yu the issue of him telling the department that he had never signed any documents and did not provide any documents in relation to this application. The Tribunal also mentioned that he was asked three times about these circumstances and he had replied that he had not contributed to the application.

Mr Yu gave evidence that he was driving on the highway at that time and he had misunderstood. He stated that it was his wife who dealt with the application. Mr Yu stated that he was not sure what he signed at the time and had wanted to get back to the

department about the matter. In response the Tribunal noted that his evidence provided no clarity and was not spontaneous as he attempted to simply go around the issues raised.

53. The Tribunal asked Mr Yu who signed the Form 888 in 2015 and he stated that he did. Asked why he would sign something of such importance without reading and understanding it, Mr Yu stated that he had limited English and he got a friend to read the contents to him. His wife had put the contents together. Asked if she spoke English, Mr Yu stated that no, she did not speak English. The Tribunal then queried how it could be that his wife, Ms Li could put a statutory declaration together if she did not speak English. Mr Yu stated that a friend of his wife actually wrote the statutory declaration. It appears that there were many parties involved in the statutory declaration ultimately provided by Mr Yu. The Tribunal expressed confusion regarding the answers being provided by Mr Yu and that he was not assisting to clarify any confusion. It seems that Mr Yu was simply providing different answers to accommodate the Tribunal's questions and revising his answers when they did not square with what was being asked.
54. Mr Yu noted that the sponsor also lived with him. The Tribunal noted that while he appeared to have provided a statutory declaration for the sponsor, it was difficult to get a sense of how close he was to the sponsor. For example, the Tribunal noted that Mr Yu, even after all the claimed miscommunication with the department, appeared to have no concern whatsoever that he may have provided deficient evidence to support the sponsor's case. The Tribunal indicated that it appeared that both he and his wife's investment was not in the sponsor, but in the visa applicant, and possibly assisting her to achieve a migration outcome.
55. Mr Yu stated that he heard the parties talk about everything, but while he spoke in generalities was able to provide little detail about their conversations regarding their future plans and the setting up of a new family unit in Australia.
56. The Tribunal is not persuaded that Mr Yu has a genuine first-hand knowledge of the sponsor's relationship with the applicant as a genuine and continuing spousal one.
57. At hearing the Tribunal also highlighted that the sponsor's mother had provided a Form 888 and the Tribunal asked whether his mother had compiled that document. The sponsor stated that his brother-in-law had in fact written it for her. Again, this document is somewhat compromised as if the sponsor's mother had provided a spontaneous statement in her own language it could easily have been translated and then provided to the Tribunal. The Tribunal cannot categorically say that the document does not reflect the sponsor's mother's sentiments, nonetheless, the Tribunal is concerned that the documentation prepared at the time of application was a formality undertaken for the purposes of assisting the applicant migrate to Australia rather than reflecting genuinely held beliefs about the relationship being a genuine and continuing one.
58. The Tribunal's concerns are also enhanced because the sponsor has now provided a second statutory declaration Form 888 by the sponsor's mother, dated 22 March 2017. However, worryingly this Form 888 is compiled in English even though the sponsor stated at hearing that his mother could not write in English, raising further questions about who wrote the document and why the document was written.
59. In any event the sponsor's mother claims that she met the applicant in China in 2016 and that they wechatted also. She states that she had given her blessing to the union from the beginning because her son *"was really in love with Chen and often I talked with her. I approved the wedding"*.
60. Another statement has been submitted from the sponsor's mother written in Chinese and then translated into English, dated 5 April 2017. The sponsor's mother recounts how the

sponsor's family was opposed to his marriage to his cousin because the sponsor's cousin's former husband had just died and it would not seem right. She also states that she did not attend the wedding between her son and the applicant but she could still feel how joyful her son was. The Tribunal places some weight on this statement as at least it is in her mother tongue.

61. After the hearing and after prompting by the Tribunal the sponsor has submitted a brief statement by an employer/co-worker discussing the characteristics of the sponsor and that during their chats he had heard that the sponsor was married and they were applying to reunite the family in Australia and he could see how much the sponsor was missing the applicant. The Tribunal places some weight on this statement also.
62. Ms Guo Zhu Wu also provided a Form 888 dated 24 May 2015, stating that when she had dinners with the sponsor he told her that he really loved the applicant and that she "*could feel their love*" and that they contacted each other a lot even though they lived in different countries. Ms Wu also refers to the sponsor telling her about his future plans for when the applicant and her son come to Australia, without actually providing any detail about what such plans might be.
63. Ms Caihuan Li, a friend of the applicant and colleague for about 5 years wrote a statement in English, stating that she knew that the applicant gave lots of compliments about the sponsor and that he was sweet, thorough and mature. She also wrote that in her memory, the sponsor was a man with manners and humorous and he had a charming personality, without going into detail about how and when she had observed the parties together to come to her assessment that she could see they got along very well.
64. This statement dated 22/05/2015 is problematic for the Tribunal because it is unclear whether Ms Li has such a good command of English or whether she too had someone else write it for her, in which case, again the Tribunal queries the purpose of the document.
65. The Tribunal emphasised at hearing that there was a paucity of verifiable third party information from independent institutions such as the police, for example, discussing whether the relationship was perceived as a genuine and continuing one. The Tribunal is aware that the police in China play a significant role in the decentralised local areas in China and are familiar with the comings and goings of citizens and outsiders. The Tribunal gave the parties the opportunity to address this perceived deficiency and the parties have now submitted evidence from the Villagers Committee. The statements are not, however, helpful in terms of providing any knowledge about the sorts of activities the parties conducted together in China and how they interacted as a family and whether the relationship is genuine and continuing.
66. The sponsor's sister has also provided a more recent statement, advising that she had only met the applicant on a few occasions (presumably when she was in China) and that they both socialised online. She refers to the virtues of the applicant and that, among other things, the couple are a "legally married couple" and that she hopes that soon the son of the applicant can enjoy the quality education and the good environment that Australia has to offer.
67. The Tribunal has also taken into account the statement by Mr Weiqui Liao referred to above who is a close neighbour of the applicant and who claims to have attended the wedding. The statement does not refer to the parties being in a genuine and continuing spousal relationship, simply making a comment that the sponsor was a person of good character and that he treated the applicant and her parents and families as his own.

68. Mr Yu's wife, Ms Ciabing Li, and friend of the applicant, has also now submitted a translated document. The Tribunal finds it odd that Ms Li could be a close friend of the applicant simply because her brother is the applicant's boss. Nonetheless, Ms Li stated that the applicant's son was now asking questions about why he did not have a father and it was breaking the applicant's heart and that the sponsor's desire to bring the applicant and her son to Australia has "*brought new hope to this originally broken family*". The Tribunal places some weight on this statement.
69. A statement has also been provided by the mother of the applicant, Ms Yuying Mo, who states that the applicant told her that a friend of hers introduced her to a man who lived in Australia. She also states that the sponsor went to visit her at their home, among other things, and that her observation was that she was touched to see the sponsor and the son of the applicant playing together.
70. In addition, the parties have submitted photos of them together with the applicant's son; the applicant's mother together with the sponsor's sister all dining together, in social situations in China as well as in tourist locations. Other photographs have been taken at the airport. The Tribunal accepts that the photos depict a level of familiarity between the applicant's son and the sponsor, however, it is not possible from the depictions of the photographs, to be satisfied that the parties are in a genuine and continuing spousal relationship. Similarly, while the applicant's mother and other family members and the sponsor's sister and the applicant and sponsor may all be known to one another, the evidence of itself does not persuade the Tribunal that the photos have not been taken for the purposes of the application, and for the sole purpose of assisting the applicant and her son achieve a migration outcome.
71. The Tribunal at hearing also asked the sponsor whether he could submit his tax returns for the previous year or so in which he would have declared the applicant as his spouse but as yet the sponsor has provided little independent evidence about his marital status and who he might be married to.
72. *Nature of persons' commitment to one another*
73. The Tribunal notes that at the time of application and time of interview with the department it was observed that even though the parties were asked questions which were reasonably expected to be known by the parties, their responses did not reflect a level of understanding of one another commensurate with two persons who were in a genuine and continuing relationship and had a mutual commitment to one another as spouses. The applicant did not know how often the sponsor visited his son, for example. In addition, the applicant also stated that the sponsor had never cohabitated with his son's mother, whereas the sponsor stated that they had cohabitated until a year prior to the department's interview.
74. Given the interview occurred some time ago the Tribunal does not place significant weight on apparent gaps in knowledge about each other. In any event by the time of the Tribunal hearing the parties seemed to have a reasonable knowledge of key aspects of each other's lives.
75. The department also had concerns about the frequency of communication between the parties. During the interview the applicant consented to departmental officers viewing the Wechat records on her mobile phone. There were 132 contact persons in the Wechat account but only 6 conversations, each containing less than 2 months chatting history. When asked, the applicant stated that she had not deleted anything from the Wechat account and that she had been using the mobile phone and SIM card for more than 2 years. The department considered that it was highly unlikely that the applicant had contact only 6 persons out of the 132 contacts on her Wechat account and no explanation was given as to

why the chat history only reflected 2 months' worth of communication. The department had concerns that the applicant had cleared and modified her Wechat account for the purpose of the interview. It was noted that the parties communicated via video chat, the contents of which the officers were unable to verify.

76. The Tribunal does not have evidence that the applicant has deleted conversations from her Wechat account and places no adverse weight on this matter.
77. The applicant also stated that although she and the sponsor used Wechat, their main contact method was in fact by phone. The department then in its decision goes into detail about the numbers of calls going in and out from the sponsor and noted that a good number were going to and from the applicant's boss, Mr Li Qunchao who is Ms Ciabing Li's brother. The calls extended to 3:48am and late at night. The migration agent in his submission of 22 March 2017 has vigorously denied that this contact was other than business. It was claimed by the sponsor and the applicant that her boss often had to consider distribution matters late at night. Furthermore, the sponsor claimed that because the applicant had to attend social functions with her boss late at night, he would often call her at odd hours to make sure she had returned home safely.
78. The Tribunal queried the sponsor about whether he had any concerns that his wife might be engaged in a relationship with her boss, Mr Li, however the sponsor stated that he trusted his wife and dismissed any such suggestion. The Tribunal asked whether the sponsor may in fact be sponsoring the applicant so that she might be able to later down the track be able to sponsor her boss so they can be reunited in Australia. The sponsor stated that Mr Li had applied for a Remaining Relative visa, meaning he did not need the applicant to sponsor him here.
79. When the Tribunal spoke about how close she appeared to be with her boss, and asked whether her boss was attempting to come to Australia, she asserted that she did not know. She stated that Mr Li was about 30 years of age.
80. The Tribunal does not place any negative weight on the fact that the applicant did not know that her boss might be applying for a Remaining Relative visa as the sponsor may have heard it from Ms Ciabing Li in Australia. Nonetheless, when the Tribunal combines the fact that the applicant's boss is also attempting to migrate to Australia, together with the evasive and unconvincing responses about why the applicant and her boss would be speaking at night to one another, concerns are raised in the mind of the Tribunal about the true nature of her relationship with her boss.
81. The Tribunal finds it difficult to accept that the nature of the work conducted by the applicant in her support role because he assigned work to her requires her boss to speak to her at say, 3.48am in the morning and the Tribunal is concerned about why the parties may be attempting to conceal the true reasons for such calls at odd hours. The Tribunal would have thought that if she were conducting business dealings with her boss at such odd times, that she would be able to provide specific details about the interactions with her boss that were so urgent that they had to be conducted late at night. The responses at hearing were vague and confined to general interactions about distribution of chop sticks as well as assigning work to her.
82. At hearing the migration agent stated that it was coincidence that the applicant's boss should also be coming to Australia. Nonetheless, if the applicant's boss is preparing to wind back business in view of coming to Australia, it is difficult to see why he would be conducting business late at night and early in the morning with the applicant.

83. Furthermore, the Tribunal does not accept the explanation that the applicant, as part of her duties, is required to attend social events with her boss related to the business that require her to go home late at night. Little information has been provided about what these social events might have been about.
84. In light of the Tribunal's concerns about the lack of probative evidence submitted, together with concerns that the applicant entered the relationship for the sole purpose of gaining a migration outcome for herself and her son, the Tribunal places some adverse weight on the matter of the applicant's dealings with her boss, which the Tribunal noted outnumbered phone calls to the sponsor.
85. The Tribunal has difficulty with the evidence and is not persuaded that it points to the parties having a mutual commitment to one another to the exclusion of others. At hearing and from third party statements it is difficult to gauge the degree to which the parties provide companionship and emotional support to one another and whether they see their relationship as long-term. This was highlighted at hearing when the Tribunal asked if the sponsor had made concrete plans to investigate school options for the applicant's son, and he gave only vague answers referring to her son attending close to the residence they would live in. The Tribunal considers that were the sponsor to become a step-father he would have made practical plans to ensure that on arrival in Australia his step-son could continue his education in a way that was not disruptive.
86. Having regard to the evidence before it, the Tribunal is not satisfied that the parties live together and not separately and apart on a permanent basis. The Tribunal has concerns that the relationship is not genuine and continuing but that it has been entered into for the sole purpose of facilitating a migration outcome for the applicant and her son.
87. Given these findings the Tribunal is not satisfied that at the time the visa application was made and at the time of this decision the parties were in a spousal relationship.
88. Therefore the visa applicant does not meet cl.309.211 and cl.309.221.
89. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa. As the second named visa applicant's application rests on the outcome of the first named visa applicant, it follows that he too does not meet cl.309.221.

DECISION

90. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Rosa Gagliardi
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).